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Dig. § 32; Dec. Dig. § 23.\* 11 Va.-W. Va. Enc. Dig. 894; 14 Va.-W. Va. Enc. Dig. 899; 15 Va.-W. Va. Enc. Dig. 873.]

**3. Exchange of Property (§ 5\*)—Rescission—Equitable Relief—Terms.**—Where an owner of a farm, induced by fraud to exchange it for other property, accounted for the income received from the other property, and promptly sought a rescission on the ground of the fraud, the mere fact that the adverse party, guilty of the fraud, had placed a mortgage on the farm, did not defeat a rescission.

[Ed. Note.—For other cases, see Exchange of Property, Cent. Dig. §§ 5, 6, 8-10; Dec. Dig. § 5.\* 5 Va.-W. Va. Enc. Dig. 402.]

Appeal from Circuit Court, Mathews County.

Suit by one Heath and others against one Rafferty and others. From a decree for complainants, defendants appeal. Affirmed.

*John S. Barbour*, of Fairfax, *Sleman & Lerch*, of Washington, D. C., and *J. Boyd Sears*, of Mathews, for appellants.

*Sale, Mann & Tyler*, of Norfolk, and *Henley, Garnett & Hall*, of Williamsburg, for appellees.

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JORDAN et al. v. WALKER.

June 12, 1913.

[78 S. E. 643.]

**1. Appeal and Error (§ 927\*)—Review—Demurrer to Evidence.**—On a demurrer to the evidence, where it is such that a jury might have found for the demurree, it is the duty of the Court of Appeals to so find.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2912, 2917, 3748, 3758, 4024; Dec. Dig. § 927.\* 4 Va.-W. Va. Enc. Dig. 540; 14 Va.-W. Va. Enc. Dig. 331; 15 Va.-W. Va. Enc. Dig. 284.]

**2. Fraud (§ 22\*)—Deceit—Duty to Investigate.**—Where a defendant, who was a director of a corporation and had knowledge of its insolvent condition, represented to plaintiff, who was also a director, to induce him to purchase defendant's stock and that of another, that the corporation was not only solvent, but had a surplus of 3,000 in excess of its liabilities and capital stock, and immediately afterwards it was found that the corporation could not be continued, and on a sale of its assets in receivership proceedings the assets were only sufficient to pay creditors 30 per cent. of their claims, it was no answer to defendant's liability for fraud that plaintiff should not have relied on such representations, but should have investigated the corporation's condition for himself.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 19-23; Dec. Dig. § 22.\* 6 Va.-W. Va. Enc. Dig. 466; 14 Va.-W. Va. Enc. Dig. 471.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

**3. Fraud (§ 20\*)—Deceit—Reliance—Remedy.**—Where a party represents as true what he knows to be false in such a way as to induce a reasonable man to believe it, and the representation is meant to be acted on, and he to whom the representation is made believes and acts on it and in consequence sustains damage, there is such a fraud as will support an action for deceit at law or a bill for rescission of the transaction in equity, whether the representation is made innocently or knowingly; the fraud in the one case being constructive and in the other actual.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 17, 18; Dec. Dig. § 20.\* 6 Va.-W. Va. Enc. Dig. 463; 14 Va.-W. Va. Enc. Dig. 471; 15 Va.-W. Va. Enc. Dig. 425.]

**4. Fraud (§ 22\*)—False Representations—Duty to Inquire.**—One to whom a representation has been made is entitled to rely on it as against the maker without further inquiry.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 19-23; Dec. Dig. § 22.\* 6 Va.-W. Va. Enc. Dig. 466; 14 Va.-W. Va. Enc. Dig. 471.]

**5. Fraud (§ 64\*)—Deceit—Reliance on Representations—Question for Jury.**—In an action for fraud, whether plaintiff relied on defendant's representations, or whether he acted in whole or in part on his own knowledge, is for the jury.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 65½, 67-71; Dec. Dig. § 64.\* 6 Va.-W. Va. Enc. Dig. 466; 14 Va.-W. Va. Enc. Dig. 471.]

Error to Circuit Court, Greenville County.

Action by L. G. Walker against R. W. Jordan and others. Judgment for plaintiff, and defendants bring error. Affirmed.

*S. V. Southall*, of Emporia, and *R. B. Davis*, of Petersburg, for plaintiffs in error.

*Buford, Lewis & Peterson*, of Lawrenceville, and *E. C. Palmer*, of Emporia, for defendant in error.

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JACOT *v.* GROSSMANN SEED & SUPPLY CO., Inc.

June 12, 1913.

[78 S. E. 646.]

**1. Appeal and Error (§ 1053\*)—Harmless Error—Erroneous Admission of Evidence.**—Where the court charged that a contract of sale of seed by sample contained only an implied warranty that the goods were of the quality set out in the contract and sold by sample, and that the jury must not consider any evidence of the failure of the seed to germinate, the error, if any, in permitting witnesses to testify as to represen-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.